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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re K.B. et al., Persons Coming Under the  
Juvenile Court Law.

SOLANO COUNTY HEALTH AND  
SOCIAL SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

N.B.,

Defendant and Appellant.

A124798

(Solano County  
Super. Ct. No. J37526, J33185)

N.B. (Mother), mother of ten-year-old G.G. and four-year-old K.B., appeals from an order terminating her parental rights to her children. She contends the juvenile court erred in finding the beneficial relationship exception to termination of parental rights did not apply. We reject the contention and affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

***Dependency History***

G.G. became a dependent of the Yolo County juvenile court on May 24, 2002, after the court sustained a dependency petition that alleged Mother physically abused and neglected her. Allegations included G.G.'s statement that her mother hit her and a report that Mother "slammed" G.G. to the ground, punched and kicked her and said, ". . . I could just kill you." Mother was ordered to participate in a family reunification plan.

Several months later, Mother was reported to be living in Solano County, and the matter was transferred to the Solano County juvenile court. A social worker for the Solano County Health and Social Services Department (Department) reported that Mother was attending counseling sessions and visiting G.G. regularly. The social worker conducted a home inspection of Mother's residence and verified that Mother was working. Mother was reunified with G.G. on June 10, 2003, and jurisdiction was successfully terminated on January 15, 2004.

The Department received a report on August 28, 2006, alleging Mother was emotionally abusing G.G. and K.B. and neglecting them. Mother entered into a voluntary family maintenance agreement with the Department but failed to comply with the service plan.

### ***Current Proceedings***

On April 24, 2007, the Department received an emergency response referral after welts and bruises were found on G.G.'s body. G.G. disclosed that Mother hit her on her face with her hand, on her arm with a hair brush, and on her legs with a remote control. G.G. also disclosed that Mother "drinks beer a lot," is a "mean drunk," and slapped K.B. "very hard on the face." The Department filed a section 300 petition alleging G.G. and K.B. were in need of protection due to Mother's physical abuse, alcohol abuse, and failure to meet K.B.'s medical needs. The whereabouts of the children's fathers were unknown. G.G. and K.B. were taken into protective custody and the juvenile court took jurisdiction over them on May 17, 2007.

The Department submitted a dispositional report on June 7, 2007, stating Mother "appear[ed] to be very interested in participating in . . . services." G.G. and K.B. were doing well in their foster home and the foster mother reported they "appear[ed] to be opening up and exposing more of their feelings, which was not the case when they first arrived." Mother was having weekly supervised visits with the children. The Department recommended that G.G. and K.B. continue to be detained and that Mother be offered reunification services for six months. The juvenile court adopted the recommendation and ordered reunification services.

According to an interim review report filed September 28, 2007, Mother was involved in a domestic violence incident in which her boyfriend hit her in the mouth, causing her to bleed. Mother was having difficulty understanding the reunification process and demonstrated anger towards the social worker and other professionals who were working with her and the children. The Department was in the process of setting up anger management counseling for Mother and had arranged for Mother to attend Alcoholics Anonymous (AA) meetings.

According to a six month status review report, Mother was not fully complying with key aspects of her case plan. She was regularly visiting her children, “mostly due to the fact that [the] Department ha[d] assigned [a social worker] to ensure visitation occurs.”<sup>1</sup> The quality of the visitation was “poor” because Mother’s behavior was “problematic,” and the social worker was concerned that Mother “still does not exhibit an emotional attachment to her children.” Mother had completed only two counseling sessions and had not provided the Department with proof that she had attended AA meetings. Mother asked the social worker to stop all services for one month because she had an opportunity to work full time. When the social worker reminded Mother of the importance of court mandated services, Mother asked why she had to attend parenting education classes and therapy sessions with K.B. and wondered why K.B.’s foster mother could not go with her. Mother agreed to “come in for one last visit with her children, as she knew her daughters were going to be adopted out.” The report recommended that an additional six months of reunification services be provided to Mother.

After a contested six month review hearing on December 3, 2007, the juvenile court found the Department had made reasonable efforts to return G.G. and K.B. to Mother. It found Mother had failed to make substantial progress in her case plan and there was no substantial probability that her children would be returned to her care in six months. The juvenile court terminated reunification services and set the matter for a permanency hearing

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<sup>1</sup> A social worker explained at the six month review hearing that visitation was regular because the Department was taking the children to Mother for visits.

under Welfare and Institutions Code<sup>2</sup> section 366.26 (section 366.26 hearing). Mother filed a petition in the Court of Appeal challenging the order setting a section 366.26 hearing. We denied the petition on its merits on April 25, 2008 (Case No. A120611).

In a section 366.26 report filed April 16, 2008, the Department stated the whereabouts of the children's alleged fathers were still unknown and that paternity had not been established. G.G. was healthy and had no developmental delays. She was "doing very well in all areas of her academic subjects" and was enjoying school. She was receiving weekly individual therapy and was on an anti-depressant after having been diagnosed with "Dysthmic/Depressive Disorder without Psychotic Features and Adjustment Disorder." G.G. "seem[ed] happier" and was "progressing in therapy." K.B. was healthy and had a speech delay for which she was receiving weekly treatment. The children had adjusted to and were doing well in their foster placement and had made progress in the previous year.

According to the section 366.26 report, Mother had maintained a relationship with her children and had visited them between once and four times a month from April 2007 through February 2008. Mother missed some visits and was sometimes "very hostile" towards the Department's staff, including "cuss[ing] and threaten[ing]" social workers. During one visit, Mother was "yelling" and "irate" and "made a scene," making G.G. cry. After that visit, K.B. "regressed and pooped in her pants for 2 weeks" despite having been "potty trained for 6 months." The foster mother reported that K.B. pulled her finger, sucked her thumb hard, pulled her face and wrinkled her clothes, and that G.G. was very quiet and "stay[ed] in her bedroom more than usual." "Overall, the visits ha[d] gone well. [Mother] provide[d] food for the children, read[] with them, [went] swimming with them and play[ed] with them." At the time of the report, the children were not in an adoptive placement but their foster mother had "expressed a potential interest in guardianship." The Department was assessing the foster mother's home and requested six months to assess the children for guardianship or an alternative permanent plan. The juvenile court continued the 366.26 hearing.

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code unless otherwise specified.

In a supplemental section 366.26 report filed August 4, 2008, the Department stated it might have located K.B.'s father and had personally served him with a notice of the section 366.26 hearing.<sup>3</sup> G.G.'s alleged father's whereabouts were still unknown. Since the previous report, Mother had one visit in April, two visits in May, two visits in June, and two visits in July. In April, Mother visited her children on April 3, 2008, and was appropriate during the visit. She refused to attend a visit on April 17, 2008, and demanded that the Department pay for her gas, stating she could get a ride if she had gas money. Mother visited with G.G. on May 1, 2008, and the Department gave her \$50 in gas cards. On May 15, 2008, Mother said she did not have a ride to the visit because her sister's car broke down. She demanded that the Department arrange for the children to be brought to her. The social worker told Mother that she could give her bus tickets. The visit on May 29, 2008, went well. Mother also visited the children on June 5 and 13, 2008, and "there were no problems." Mother declined to visit her children on June 19, 2008, stating she had moved. The Department was unable to reach Mother to confirm a June 26, 2008, visit because Mother's telephone had been disconnected. Mother visited the children on July 10 and 17, 2008. The report stated, "At times, [Mother] participates in weekly visitation and at other times, she declines visits or refuses to come to visits."

According to the supplemental report, Mother was unemployed. She "moved frequently in the past year" and said she was living with her boyfriend, family members, and others. She exhibited significant mental health problems but was not receiving treatment. She told the social worker that she attended AA meetings for two weeks and participated in some anger management and parenting classes, but had not provided any documents verifying her participation. She said she loves her children and wants them back.

The supplemental report further stated there were no known relatives who were interested in adoption or guardianship. K.B. had special needs but was assessed as adoptable due to her young age. G.G. was also a special needs child who had expressed she wanted to be adopted. The report stated that G.G. "usually wants to visit her mother, when her mother is calm." The children had been living with their foster mother for 15 or

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<sup>3</sup> Neither G.G.'s or K.B.'s father appeared in the case.

16 months. The Department was working with the foster mother to see if she would be able to successfully complete an adoptive home study. The Department requested an additional six months to make recommendations regarding the most appropriate permanent plan for the children.

At an August 6, 2008, hearing, the parties agreed to continue the section 366.26 hearing to February 4, 2009.<sup>4</sup> Minors' counsel requested a reduction in visitation from once a week to once a month, and a contested hearing on the visitation issue was conducted on September 9, 2008. Mother did not attend the hearing. The Department's attorney stated the Department had offered Mother visitation once a week but that Mother had not visited the children since July 17, 2008, and had provided "various excuses" for not visiting. Minors' counsel stated, "I would hope that she would keep one a month consistently. And with that consistent visitation, then the social worker has the discretion to increase the number during the month. But it's just too hard on the girls to get ready for a visit and have so many of them not happen." The juvenile court reduced the visits to once per month and gave the social worker discretion to increase the visits if appropriate. It also ordered that Mother have the opportunity to reschedule visits if she asks to do so in a timely manner.

A January 15, 2009, section 366.26 report recommended termination of parental rights, with a permanent plan of adoption for both children. According to the report, visits went "well" when Mother was "calm and not upset." Additional visits were scheduled to take place on August 14, 21, 28, 2008, and September 3 and 10, 2008, but did not occur because Mother "would not ride the bus." Mother had visits with the children on November 20, 2008, and December 28, 2008, because the social worker transported the children to her. Mother was "appropriate" with the children during these visits. She gave the children Christmas gifts and gave G.G. tennis shoes for her birthday. She had coloring books and toys for the children and made food for them. According to the report, "[K.B.] will not go to her mother or hug her when her mother asks her to. [G.G.] hugs her mother at

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<sup>4</sup> The section 366.26 hearing was continued two more times to March 10, 2009, then to March 17, 2009.

the beginning and end of the visits.” G.G. was “very quiet and appeared sad” after the November 20, 2008, visit but was “happy” after the December 28, 2008, visit.

The report also stated that the Department completed its adoptability reviews for both children on January 8, 2009. The children were assessed as adoptable due to their ages and because “all of their developmental and medical needs [are being] met, they are able to bond/attach to parental figures, and they have a caretaker [who] is willing to adopt them, if the children are legally freed for adoption.” The children had been living with their foster mother for 21 months, and “[G.G.] had stated over the last year that she wants to be adopted by her caretaker.” Both children were very attached to their foster mother. G.G. wished to continue having contact with Mother and the foster mother was willing to allow contact between Mother and the children, as long as Mother acted appropriately. The Department had made a referral for mediation for a post adoption contact agreement. The foster mother was committed to adopting the children and understood all of the legal and financial responsibilities of adoption. She had “almost completed her adoptive home study” and the social worker working with the foster mother believed the foster mother would “pass her home study.”

At a contested section 366.26 hearing on March 17, 2009, a social worker testified she was assigned to manage G.G. and K.B.’s case in January 2008. When she received the case, there were concerns about G.G.’s mental health. The Department provided services to G.G. to address those issues, including weekly therapy and medication management. G.G.’s therapist said G.G. “was doing very well and that she would likely be terminated from therapy soon.” G.G. was no longer taking medication because she did not feel she was depressed, and the doctor recommended that she stop taking the medication. The social worker testified that K.B.’s mental health was “good” and that she was seeing a speech therapist for a speech delay. K.B. had made “remarkable progress” in her speech and language skills. The children had been in their foster mother’s home for almost two years and had demonstrated an ability to bond to a caretaker. They were receiving regular health and dental checkups, were very healthy, and all of their needs were being met. They were attached to their foster mother, were happy to see her when they returned from a visit, and

appeared very secure and stable in the home. The foster mother was very committed to adopting the children and G.G., who was very attached to her foster mother, said she wanted to be adopted by her. The social worker testified that the Department conducted an adoptability review and found the children were adoptable. She testified the Department considered the children's ages, their health, their ability to bond with caretakers, and whether their caretaker was available to adopt them. She testified she received information in February 2009 indicating the foster mother and her home were approved for adoption.

The social worker testified she observed about four or five of Mother's visits with the children. She testified the visits generally went well, and "very well" when Mother was in a calm mood. Mother provided food for the children, read to them, and went swimming with them. G.G. indicated she wanted continued contact with Mother. The social worker agreed with Mother's counsel that it would be a "good idea" to try to work out an agreement for continued visitation in this case, based on the fact that G.G. wanted continued contact. The social worker testified that she in fact tried to work out a post-adoptive agreement with the help of a children's consortium but that the process was never completed because "[w]e did not know where [Mother] was. Her phone was disconnected. I went by her grandfather's house, and she was not there. I left notes, and the Consortium for Children mediator said 'close the case.' "

Mother testified that she thought the visits with the children went very well. She testified that she plays with them, feeds them, talks to them and asks them how they are doing. She also hugs them, kisses them and is very affectionate with them. She believed her children, especially K.B., were very happy to see her. She said she "know[s]" K.B. wants to be with her, and stated that G.G. told her she wanted to live with Mother and visit with her foster mother on the weekends. She testified that compared to when K.B. lived with her, K.B. was "very calm," "very quiet," and "doesn't move as much." Mother testified she wanted her children to be returned to her. She believed she had made some mistakes but was a good mother. Mother further testified she was visiting the children until visits were "tak[en] away" from her. She admitted she was "mad" during a visit but denied threatening anyone and said she never refused a visit. She testified it was difficult to get to



visits because she did not have a car and had to take a 30 minute bus ride on a bus line that ran only twice a day. She testified she always wants to see her children.

After closing argument, the juvenile court stated, “First thing I do want to do is to say to [Mother] that I am aware of and I am acknowledging the very positive aspects of the visits that were described to me as positive and also that I understand the difficulties of transportation . . . . [¶] The emphasis is now on the children.” The juvenile court found the children were adoptable and likely to be adopted. It found the beneficial relationship exception to termination of parental rights did not apply, stating, “When I weigh the benefit of permanence and stability of an adoptive home . . . against the potential detriment of severing the relationship between mother and children, in the legal sense, I’m going to find that even by a mere preponderance, that loss of a parental relationship would not be more detrimental.” It further stated, “Mother has not met the burden to bring herself within this relationship. I understand that mother has maintained, in a sense, regular visits, regular in the sense that this is not a case where months have gone by without her visiting and then she resurfaces. [¶] . . . But . . . this benefit . . . —and I think there would be a benefit— . . . that would continue if the relationship between [G.G.] and [M]other continued . . . is of that incidental kind, and it is not of the significant and strong kind, that is described in the Autumn. H. case. [¶] Finding the relationship to not be of that quality, I am going to terminate parental rights and free [G.G.] and [K.B.] up for adoption here today.” It ordered that Mother have contact with G.G. as arranged between the foster mother, Mother, and the Department, or that contact “may also occur pursuant to the completion of a post-adoption contact agreement . . . .”

### **DISCUSSION**

Mother contends the juvenile court erred in terminating her parental rights to G.G. and K.B. because the beneficial relationship exception to termination of parental rights applied.

The governing statutes provide that if reunification is not possible within the statutory time frame, the child must be provided a stable, permanent home by adoption, guardianship or placement in long-term foster care. (§§ 366.21, 366.22, 366.26.) If

reunification efforts have failed and the child is adoptable, the juvenile court *must* select adoption unless it finds that terminating parental rights would be detrimental to the child under one of several statutory exceptions, including the beneficial relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i): “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” It is the parent’s burden to show the applicability of one of the exceptions to adoption. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534.)

In order to overcome the statutory preference for adoption when reunification has failed to occur within the statutory timeframe, and meet the burden of proving that the beneficial relationship exception applies, “the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits.” (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 229; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) “Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*); see also *In re Derek W.*, *supra*, 73 Cal.App.4th at p. 827 [a “pleasant and emotionally significant” relationship was insufficient].) “[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

“[I]f an adoptable child will not suffer great detriment by terminating parental rights, the [juvenile] court must select adoption as the permanency plan.” (*In re Dakota H.*, *supra*, 132 Cal.App.4th at p. 229.) “A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent. [Citation.] A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child’s need for a parent.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

On appeal, we may reverse a juvenile court's decision rejecting the beneficial relationship exception only if the court abused its discretion (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351) or if its decision is not supported by substantial evidence (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 576; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689). "The practical differences between the two standards of review are not significant." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) " '[E]valuating the factual basis for an exercise of discretion is similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only " 'if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order that he did.' . . ." ' [Citations.]" (*Ibid.*)

Although Mother missed more than a few scheduled visits for various reasons (April 17, May 15, June 19, June 26, August 14, 21, 28, September 3, 10, 2008), the court found she visited the children regularly in the sense that "this is not a case where months have gone by without her visiting and then she resurfaces." There was evidence that the visits generally went well, or "very well," especially when Mother was calm. Mother prepared food for the children, read to them, went swimming with them, and brought gifts for them. Mother testified that she plays with the children, feeds them, talks to them, asks them how they are doing, and hugs and kisses them. She believed her children, especially K.B., were very happy to see her.

However, the evidence also supported the court's finding that the relationship between Mother and the children did not include the "significant, positive, emotional attachment" that is required for the beneficial relationship exception to apply. (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Although G.G. appeared to enjoy most of the visits and said she wanted continued contact with Mother, one of the reports stated she only "usually" wanted to visit her mother, "when her mother is calm." G.G., who had suffered Mother's physical and emotional abuse over the years, cried during a visit when Mother was "yelling" and "irate" and "made a scene," then became very quiet and "stay[ed] in her bedroom more than usual" after the visit. Mother, who was not receiving treatment for her

mental health issues and was not in full compliance with her case plan which included AA meetings, anger management and parenting classes, was not making the progress necessary to ensure that no such negative contacts would occur in the future. As for K.B., who had been living with her foster mother for almost half of her life at the time of the section 366.26 hearing, there was less evidence of a “significant, positive, emotional attachment from child to parent.” (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Although Mother testified that she believed K.B. was “very happy” to see her, there was other evidence that K.B. did “not go to her mother or hug her when her mother asks her to” and “regressed” after one of the visits. There was no evidence that K.B. expressed a wish to continue seeing Mother or to return to her care.

Mother argues that the juvenile court’s finding that her relationship with her children “was of the ‘incidental kind’ . . . was belied by a number of facts,” including the juvenile court’s comments that there were “very positive aspects of the visits that were described to [the court] as positive” and “I think there would be a benefit,” G.G.’s statement that she wanted continued contact, and the social worker’s acknowledgment that it would be a “good idea” to try to establish a post-adoptive agreement for continued contact between Mother and G.G. We disagree. While the above comments and statements show Mother and the children shared a relationship, it does not support a finding that it was a sufficiently strong, positive emotional bond for the beneficial relationship exception to apply.

In contrast, there was ample evidence that G.G. and K.B. were thriving in their foster mother/prospective adoptive mother’s home in which they had lived for almost two years, and that they had made great progress after being removed from their mother’s care. G.G., who had been diagnosed with depressive disorder and placed on medication, was no longer taking medication at the time of the section 366.26 hearing, “seem[ed] happier,” and was “progressing in therapy.” K.B. was receiving weekly treatment for her speech delay and had made “remarkable” progress in her speech and language skills. The children’s developmental and medical needs were being met in their foster mother’s home, and G.G. “had stated over the last year that she wants to be adopted by her caretaker.” Both children were very attached to their foster mother, were happy to see her when they returned from

visits with their mother, and appeared very secure and stable in the home. The foster mother was very committed to adopting the children and her home had been approved for adoption. On this record, the court did not err in determining that the children would not suffer great detriment by termination of their relationship with their mother, as the benefit of maintaining that relationship was outweighed by their need for permanence. While we acknowledge the relationship Mother shared with her children, we cannot fault the juvenile court's finding that the balance between the strength and quality of Mother's relationship with her children and the security and the sense of belonging to a new family tipped in favor of adoption. The juvenile court reasonably determined that the beneficial relationship exception to termination of parental rights did not apply.

Mother contends we should nevertheless reverse the order terminating her parental rights to G.G. and K.B. because the juvenile court utilized the incorrect legal standards in reaching its decision. Specifically, she states the juvenile court erred in failing to apply the "clarifi[ed]" and/or "revis[ed]" standard set forth in *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*), a post-*Autumn H.* case.<sup>5</sup>

In *S.B.*, the Court of Appeal reversed an order terminating the father's parental rights to his daughter, S.B., on the ground the beneficial relationship exception applied. (164 Cal.App.4th at p. 299.) The parties agreed the father maintained regular, consistent and appropriate visitation with S.B., two to three times a week. (*Id.* at pp. 294, 295, 298.) He demonstrated empathy and the ability to put himself in S.B.'s place to recognize her needs. (*Id.* at p. 294.) He had been S.B.'s primary caretaker for three years, and after she was removed from his care, he "immediately recognized that his drug use was untenable, started services, maintained his sobriety, sought medical and psychological services" and "complied with 'every aspect' of his case plan." (*Id.* at p. 298.) S.B. continued to display a strong attachment to her father. (*Ibid.*) She was unhappy when visits ended and tried to leave with her father, said "I love you" and "I'll miss you" to him, ran into his arms, hugged him, sat on his lap, nestled up to his neck and whispered and joked with him, and

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<sup>5</sup> Mother does not contend that *Autumn H.* is no longer good law, and in any event, there is nothing to support such a contention.

spontaneously said, “I wish I lived with you and Mommy and Nana.” (*Id.* at p. 298.) The Court of Appeal concluded the “record here fully supports the conclusion [the father] continued the significant parent-child relationship *despite* the lack of day-to-day contact with S.B. after she was removed from his care.” (*Id.* at p. 299.) It rejected the agency’s argument that the beneficial relationship exception does not apply unless the child has a “primary attachment” to the parent. (*Ibid.*) It also held: “The fact that S.B. also had a strong, positive and significant relationship with her grandmother does not negate the harm S.B. would experience from the loss of her significant, positive, emotional relationship with her father. Thus the proposition that S.B.’s loss may be healed by time and support, even if true, does not support a finding S.B. would not be greatly harmed by termination of parental rights.” (*Id.* at p. 300, fn. omitted.) Finally, it held the juvenile court improperly based its decision to terminate parental rights in part on the grandmother’s willingness to allow continued contact between the father and S.B., stating, “We do not believe a parent should be deprived of a legal relationship with his or her child on the basis of an unenforceable promise of future visitation by the child’s prospective adoptive parents.” (*Ibid.*)

Mother contends the juvenile court in this case failed to acknowledge the holding in *S.B.* that day-to-day contact is not required and that the child does not have to have a “primary attachment” to his or her parent for the beneficial relationship exception to apply. There is nothing in the record, however, indicating the juvenile court believed day-to-day contact is required or that Mother had the burden of showing G.G. or K.B. had a “primary attachment” to her. The juvenile court did not make any comments indicating it believed day-to-day contact was required, nor did it state that a “primary attachment” was necessary. Instead, it found that although Mother “maintained, in a sense, regular visits” which were often described as positive, the relationship between Mother and the children was “not of the significant and strong kind” required for the exception to apply.

Mother contends the juvenile court also failed to acknowledge the holding in *S.B.* that a strong, positive relationship between a child and her caretaker “does not negate the harm [the child] would experience from the loss of her significant, positive, emotional relationship with her [parent].” (*S.B.*, *supra*, 164 Cal.App.4th at p. 300.) Mother’s

argument fails because it is based on the premise that G.G. and K.B. shared a “significant, positive, emotional” bond with their mother. As noted, however, the juvenile court found that G.G. and K.B. did *not* share this type of bond with Mother, and the finding was supported by substantial evidence.

Mother further contends the juvenile court, as the juvenile court did in *S.B.*, improperly “based its decision to terminate parental rights in part on the [caretaker’s] willingness to allow [the child] to continue to visit [the parent].” She argues that the juvenile court’s use of the term “in the legal sense” when referring to termination of the parental relationship shows the court believed that the parental relationship would actually continue (through a post-adoptive agreement for continued visitation, for example) even if Mother’s legal rights to the children were terminated. We believe it is speculative to state that the juvenile court’s use of the term “in the legal sense” shows it believed Mother would have continued contact with her children. The evidence presented at trial showed the Department had tried to work out a post-adoptive agreement for continued contact but that the process was never completed due to Mother’s unavailability. There was other evidence that many of the visits had occurred only because the Department ensured that they would occur. It was therefore not clear whether Mother would continue to have contact with the children post-adoption. Moreover, the record does not support a conclusion that the juvenile court *relied* on the foster mother’s willingness to continue contact in finding the beneficial relationship exception did not apply. Instead, the record is clear that the juvenile court found the exception did not apply because Mother and the children did not share the requisite bond.

Finally, Mother contends the juvenile court “improperly applied a portion of the opinion in *Autumn H.*” when it balanced the “strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer.” (See *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) She states that “[h]ere, there was no ‘tenuous placement’ to be considered as the court had no intention of returning the children to [Mother’s] care, it having terminated her reunification services . . . . Furthermore, there was no evidence presented of any possible ‘detriment’ presented [*sic*] to

indicate that [G.G.] could not continue to ‘belong’ to her ‘new family’ under a plan of legal guardianship.” Although this argument is not entirely clear, it appears Mother is arguing that the juvenile court should not have utilized the balancing test mandated by *Autumn H.* because placement with Mother was not a real option, and that it should have ordered a legal guardianship instead of adoption. She cites no authority in support of her position that the balancing test was improperly used. Further, the juvenile court in this case was *required* to select adoption (instead of legal guardianship) as the permanent plan because the reunification plan had failed and the children were adoptable, and no exception to termination of parental rights applied. (See § 366.26.)

**DISPOSITION**

The order terminating Mother’s parental rights to G.G. and K.B. is affirmed.

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McGuiness, P.J.

We concur:

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Siggins, J.

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Jenkins, J.